

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

S.A.No.395 of 1996

Manickam

.. Appellant/1st Respondent/
2nd Plaintiff

Versus

1. Jayalakshmi alias Neelavathi

2. Ramalingam

3. Sanjeevi

4. Rajendiran

5. Essar

... Respondents 1 to 5/Appellants
Defendant 1 to 4 & 6

6. Poongothai

.. 6 Respondents/3rd Respondent
7th defendant

The Second Appeal has been filed, under section 100 of Civil Procedure Code, 1908, against the Judgment and Decree made in A.S.No.83 of 1989, dated 25.11.1993, on the file of the Sub Court, Villupuram, reversing the Judgment and Decree made in O.S.No.1426 of 1986, dated 24.8.1989, on the file of the Additional District Munsif Court, Villupuram.

For Appellant : Mr. T. Dhanyakumar

For Respondents : Mr. R. Yashodvardhan

JUDGMENT

The present second appeal has been preferred against the Judgment and Decree, dated 25.11.1993, made in A.S.No.83 of 1989, on the file of the Sub-Court, Villupuram, reversing the Judgment and Decree, dated 24.08.1989, made in O.S.No.1426 of 1986, on the file of the Additional District Munsif Court, Villupuram.

2. The second plaintiff is the appellant herein. The suit had been filed for declaration of title, recovery of possession and for mesne profits, with regard to the suit property.

3. The first defendant had a brother by the name Ramanuja Gounder. Before the year 1962, there was an oral partition between the plaintiff and his brother Ramanuja Gounder. In the said partition, the portions marked as 'B.R.B.C.' 'FKNJ' in the plaint plan had been given to the first plaintiff. The portions marked as 'PNDC' 'EJKF' in the plaint plan had been given to Ramanuja Gounder. The portions marked as 'ABCDEFGH' in the plaint plan measuring 21¼ cents, comprised in Survey No.8/16, is the self acquired property of the first plaintiff and it belongs to him, exclusively. The said property had been purchased by the first plaintiff in the year 1954 with his own funds. Since it is a self acquired property of the first plaintiff, Ramanuja Gounder had no share in it. From the date of purchase the said property having an extent of 21¼ cents has been in the possession and enjoyment of the first plaintiff.

4. On 29.6.1962, Ramanuja Gounder had mortgaged his entire portions of the properties to one Jayaraman. At no point in time, Ramanuja Gounder had been in enjoyment or in possession of the 'ABCDEFGHI' marked portions of the properties. On 17.1.1966, the plaintiff's elder brother Ramanuja Gounder had written a settlement deed in favour of his daughters and sons with regard to the undivided ½ share of the properties in Survey No.8/16 in Pagandai Village. The 'ABCDEFGH' marked portion of the properties have never been in the enjoyment of the daughters or Ramanuja Gounder. They have only been in the possession and enjoyment of the plaintiff.

5. After the death of Ramanuja Gounder, on 14.3.1979, the daughters of Ramanuja Gounder had sold to Venugopalsamy the undivided ½ share of the properties in Survey No.8/16 to an extent of 0.64 cents. The said sale had not been executed properly and therefore, not valid. The defendants had, by use of force, occupied 10½ cents in the portions shown in the plaint plan to be belonging to the plaintiff and contained in 'A' schedule. Even though the first plaintiff had objected to the encroachment of Venugopalsamy, he could not take any immediate action due to his poor financial status. After the death of Venugopalsamy, his legal heirs are in enjoyment of the properties. Before 14.3.1979, 'ABCDEFGH' marked portions in the plaint plan had been in the possession and enjoyment of the plaintiff. Since the 'A' schedule properties had been in the possession and enjoyment of the plaintiff from 10.8.1954 till 13.3.1979, he is entitled to the properties by way of adverse possession.

6. In spite of several attempts made by way of Panchayat requesting Venugopalsamy to hand over possession of the properties, it was not adhered to. A notice had been sent, on

28.6.1986, and it had been received by the defendants 1 to 6 and the 7th defendant had not received it. The first defendant alone had replied, on 8.7.1986, making false claims.

7.It has been stated that the claim that the suit properties and the properties on its Southern side are common, undivided properties belonging to the family and that Ramanuja Gounder has a right to half the properties is incorrect and false. The sale deed in favour of Venugopalasamy is also false. Since the defendants have been cultivating sugar cane crops in the suit properties, the plaintiff is entitled to mesne profits. Since the first plaintiff had died, on 1.5.1988, the second plaintiff, being the legal heir, has been impleaded by an order, dated 9.2.1989, made in I.A.No.2297 of 1989.

8.In the written statement filed on behalf of the third defendant and adopted by the defendants 1,2,4 to 7, it has been stated that the suit claims made by the plaintiff are false and therefore, the suit is to be dismissed with costs. The suit properties do not belong to the plaintiff. The claim of the plaintiff that there was a partition between him and Ramanuja Gounder and that the suit properties were allotted to the plaintiff is false. There was no allotment of share in the properties to Ramanuja Gounder, as stated in the plaint. The suit has been filed by the first plaintiff only with the wrongful intention of appropriating the properties.

9.The claim that the plaintiff had bought the suit properties with his own income is not true. It is also incorrect to state that the suit property was in the possession and enjoyment of the plaintiff. It is also wrong to state that the suit properties belong to Sadhasiva Gounder due to the reason that they have not been mentioned in the mortgage deed of Ramanuja Gounder. It is incorrect to state that the suit properties have never been in the enjoyment of Ramanuja Gounder. On the contrary, it is true that Ramanuja Gounder had made a settlement deed in favour of his daughters in the year 1966.

10.The claim of the plaintiff that the suit properties are his independent self acquired properties is false. It has been stated that on 14.3.1979, the daughters of Ramanuja Gounder had written the properties in favour of the father of the defendants and since then the father of the defendants and the defendants have been in possession and enjoyment of the suit properties. It has also been stated that the boundaries of the suit properties have not been properly stated in the plaint. Further, it has been stated that the properties belonging to the defendants are on the Northern side of the suit properties and that the plaintiff has no rights in those properties.

11. The defendants have sent reply to the notice issued by the plaintiff denying the claims made by them and also stating that the plaintiffs do not have any right in the suit properties and that they cannot claim mesne profits with regard to the cultivation carried on in the said suit properties and therefore, the suit is liable to be dismissed with costs.

12. Based on the rival contentions of the plaintiff as well as the defendants, the following issues have been framed by the trial Court:-

"1. Whether the plaintiff is entitled to the suit properties?

2. Whether the defendants have the right to deny the title of the plaintiff in the suit properties?

3. Whether the settlement deed is true, correct and binding?

4. Whether the suit properties have been described properly?

5. Whether it is correct to state that the defendants perfected title through adverse possession?

6. Whether the plaintiffs are entitled to mesne profits and if so, to what amount?

7. Whether the plaintiffs are entitled to any other relief?"

13. The following issues have been framed as additional issues:-

"1. Whether the suit is bad in law for not having impleaded Raja?

2. Whether the suit is maintainable?"

14. Based on the rival claims of the parties concerned and the evidence available, the trial Court had decreed the suit as prayed for by its judgment and decree, dated 24.8.1989.

15. The trial Court had found that the defendants have not shown proof to support their claim that the suit properties have been in the possession and enjoyment of Ramanuja Gounder. It has been accepted on behalf of the defendant, during the cross-examination that till the date of purchase, the suit properties were in the enjoyment of the first plaintiff. Further, there has been no evidence let in on behalf of the defendants to prove that the settlement deed made by Ramanuja Gounder in the year 1996 in favour of his daughters have been given effect to.

16. On examining the documents filed on behalf of the defendants, it has been seen by the trial Court that during the year 1954, the family had only outstanding loans since money had been borrowed from Ariyaputhira Gounder by mortgaging the family properties. In ssuch circumstances, the defendants have not been in a position to show that the suit properties have been purchased from the common family income. The trial Court had placed reliance on the claims of the plaintiff that the suit properties had been bought by him from the income he had earned by doing vegetable business.

17. Therefore, the trial Court had come to the conclusion that the plaintiff was entitled to the suit properties. Hence, the trial Court had also held that the defendants were not entitled to claim any right in the suit properties. While coming to its conclusion in favour of the plaintiff, the trial Court has also found that the boundaries of the suit properties have been rightly described by the plaintiff and that the defendants cannot claim title to the suit properties by adverse possession. Further, it had been held that there was no necessity for the plaintiff to have impleaded Raja as a party to the suit. However, the trial Court had come to the conclusion with regard to the claim made by the plaintiff for mesne profits that it should be claimed by way of a separate suit.

18. Aggrieved by the judgment and decree of the trial Court, dated 24.8.1989, made in O.S.No.1426 of 1986, the defendants therein had filed an appeal before the Additional District Munsif Court, Villupuram, in A.S.No.83 of 1989.

19. The lower appellate Court had framed the following points for consideration:-

"1. Whether the suit properties are the properties of the deceased first plaintiff? If so, is the plaintiff entitled to the suit properties?"

20. The lower appellate Court, while reversing the findings of the trial Court by its judgment and decree, dated 25.11.1993, made in A.S.No.83 of 1989, had held that the plaintiff had not properly described the suit properties in the plaint and that the suit was bad in law for not impleading one Raja, who was a necessary party.

21. The lower appellate Court had also held that the alleged oral partition between the first plaintiff and Ramanuja Gounder cannot be held to be true. The lower appellate Court had found that the oral evidence of P.W.1 did not support the claims made on behalf of the plaintiff. It was also found that there was no proof

to support the claims of the plaintiffs that the suit properties were purchased from their own income. The lower appellate Court had come to its conclusion stating that there was no proof to support the claims of the plaintiffs that the suit properties belong to them. Further, it had been held that since the legal heirs of Ramanuja Gounder has been in possession of the suit properties since the year 1966, the plaintiffs are not entitled to the reliefs prayed for by them.

22. Aggrieved by the judgment and decree of the lower appellate Court, dated 25.11.1993, made in A.S.No.83 of 1989, the present second appeal has been filed by the appellant.

23. The substantial questions of law raised in the second appeal are as follows:-

"a. Whether the lower appellate Court erroneously placed the onus on the plaintiffs to prove that the suit property covered under Exhibit A.1 does not belong to joint family contrary to the well established presumption in favour of the plaintiff?

b. Whether the plaintiffs prescribed title to the suit property by adverse possession and prescription?

c. Whether the Exhibit B.1 is valid?

d. Whether the gift deed under Exhibit B.1 is proved according to law?"

24. On a perusal of the records available and on analysing the rival contentions put forth on behalf of the parties concerned, it is seen that the trial Court, while deciding the suit in O.S.No.1426 of 1986, had come to the conclusion that the plaintiffs in the suit had sufficiently established their claims based on the oral as well as the documentary evidence. While coming to its conclusion on the issues framed, the trial Court had held that the suit property had been purchased by the appellant, who was the first plaintiff in the suit, with his own means and the said property had, therefore, belonged to the plaintiffs.

25. The contentions raised on behalf of the defendants in the suit that the suit property was an undivided property belonging to the family was not accepted by the trial Court. Further, the trial Court had held that the settlement deed said to have been made by Ramanuja Gounder was not sufficiently proved to be true and existing. It was also held that since the defendants had admitted that the suit property was under the enjoyment of the plaintiffs before the year 1979, the defendants have not proved adverse possession in their favour. In the appeal filed by the defendants before the first appellate Court in A.S.No.83 of 1989,

the judgment and decree of the trial Court, dated 24.8.1989, had been reversed.

26. The lower appellate Court had come to its findings reversing the judgment and decree of the trial Court due to the reason that the description of the suit property by the plaintiffs was improper and incorrect and that the plaintiffs have not shown sufficient proof to show that the suit property was purchased by the appellant/first plaintiff by carrying on his own business in Vegetables.

27. Further, the first appellate Court had found that the trial Court had relied on the fact that the suit property was not included in the mortgage deed of the defendants and therefore, it had presumed that the property did not belong to the defendants. The first appellate Court had also come to its conclusion, in reversing the findings of the trial Court, that the suit was bad in law, since the necessary parties had not been impleaded. It was found that the subsequent purchaser of the property had not been shown as a defendant in the suit. It is also clear that the plaintiffs had not explained the long delay in agitating the matter by way of filing the suit, even though they had admitted that the defendants had taken the possession of the lands from 13.3.1979 and that they have been cultivating the lands with Sugar cane and other crops. The first appellate Court had come to the conclusion that the trial Court had no sufficient documentary or oral evidence to come to its findings, since it was the plaintiffs, who were burdened with the requirement to prove their case.

28. It is found that the substantial questions of law raised before this Court in the present second appeal are basically relating to the aspect of appreciation of the available evidence. From the records available before this Court, it is seen that the lower appellate Court had rightly analysed the evidence on record, both oral and documentary, and had come to the right conclusions. There is nothing shown on behalf of the appellant herein to persuade this Court to interfere in the findings of the the lower appellate Court, dated 25.11.1993, made in A.S.No.83 of 1989.

29. On a perusal of the judgment and decree of both the trial Court as well as the first appellate Court, this Court does not find sufficient reason or cause to set aside the decision of the first appellate Court made in its judgment and decree, dated 25.11.1993. Admittedly, the possession of the suit property has been with the defendants, atleast from the year 1979 and the plaintiffs had not explained the delay in agitating the matter before the Court of law while filing the suit only in the year 1986, except by saying that they were poor men and had no means.

If that is taken to be true, then it could also be held that they could not have had sufficient means to buy the suit property in question from their own means, except from the contributions from the joint family funds. No proof has been shown with regard to the Vegetable business of the appellant/first plaintiff, which he is said to have been carrying on. Therefore, in such view of the matter, this Court does not find sufficient reasons to interfere with the judgment and decree of the first appellate Court, dated 25.11.1993.

30. For the reasons aforesaid, the appeal fails and is dismissed confirming the judgment and decree, dated 25.11.1993, passed by the first appellate Court in A.S.No.83 of 1989. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge,
Villupuram.

2. The Additional District Munsif, Villupuram.

3. The Record Keeper,
VR Section, High Court, Madras.

+ 1 cc to Mr. R. Yashod Varadhan, Advocate, SR No.312822

+ 1 cc to Mr. T. Dhanyakumar, Advocate, SR No.312878

NG (CO)
SR/2.7.2006

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